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P+E

July 8, 1963
JH-N-1

STATOTHR [redacted] 15 July

STATOTHR

This letter will furnish preliminary information on [redacted] s proposed assignment to your shop.

STATOTHR

1. Budgetary Cost - [redacted]

2. Period - Approximately 1 September 1963 through 31 August 1964. Thirty days will be required for relocation between approval and start of work

3. Contract Type - Time and Material, payment to be made on basis of attendance reports countersigned by your designer

4. Specific Contract Terms

STATOTHR

a) Provision for visits to our plant for [redacted] to keep abreast of developments here relating to his assignment with you - two consecutive days per month

b) Provision for termination by either party on one weeks notice

c) Services to be considered under supervision and control of government representatives for purposes of defining organizational conflicts of interest (see exception b to rule 2 in attachment "DOD Directive No. 5500.10 dated June 1, 1963")

STATOTHR

d) Provision for [redacted] to obtain identification as government employee so that he may take advantage of escape clause in leasing apartment - would apply only in event of exercise or (b) above

We look forward to the implementation of the above program and will furnish additional information as it becomes available.

STATOTHR [redacted]

CMH:jkh
Enclosure

Declass Review by NIMA/DOD

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JH-M-1

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June 1, 1963
NUMBER 5500.10

GC, DoD

Department of Defense Directive

SUBJECT Rules for the Avoidance of Organizational Conflicts of Interest

The attached Rules for the Avoidance of Organizational Conflicts of Interest are hereby promulgated, effective immediately, for the guidance of personnel of the Department of Defense and its contractors.

Roswell L. Gilpatric

Deputy Secretary of Defense

Inclosure
As stated

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Rules for the Avoidance of Organizational Conflicts of Interest

I. PREAMBLE

The Report to the President on Government Contracting for Research and Development (generally known as the Bell Report) states that "today about 80% of Federal expenditures for research and development are made through non-Federal institutions" and that "there is no doubt that the Government must continue to rely on the private sector for the major share of the scientific and technical work which it requires."

In such contracting, it is the policy of the Department of Defense that the contractor should be given the maximum responsibility and authority for the performance of assigned tasks, and these tasks be of such a nature, even when they are part of a major system, as to be self-contained from a management point of view. The Report further states that there are certain essential management functions in the research and development area that must be retained within Government. For instance, the integration and coordination of the separate parts of a large weapons system contract involving several major contractors would, as a general rule, be handled by Government agencies. To achieve this integration and coordination, however, special arrangements are sometimes needed such as are made with nonprofit organizations and industrial organizations. In this case, the Government must be able to establish rules for its relationships with the nonprofit or industrial organizations which may be stricter than those normally employed with prime contractors. All prospective contractors will be advised of the applicability of the rules by a notice in solicitations and by a clause in resulting contracts.

Where the Department of Defense does contract for research and development work, as it must for the bulk of that work, its choice of a contractor should be based primarily upon two considerations:

"(1) Getting the job done effectively and efficiently, with due regard to the long-term strength of the Nation's scientific and technical resources, and

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"(2) Avoiding assignments of work which would create inherent conflicts of interest."

The Report points out that while there are advantages and disadvantages to the various types of organizations within the private sector (universities, private nonprofit organizations and industrial corporations), these types of organizations should not "be given areas of monopoly on different kinds of work," or be permitted to develop a privileged relationship to the Department of Defense.

In connection with the second criterion, the Report proposes that each department develop a "Code of Conduct" for organizations in the research and development field. These rules have been developed in accordance with that instruction.

It should be borne in mind that the pragmatic test for the the selection of a contractor for a particular research and development contract covers both profit and nonprofit organizations, including those created largely or wholly with Government funds. But the rules do not deal with the criteria for the creation of additional Government-sponsored nonprofit organizations in this category. It is the policy of the Department of Defense that such organizations are created only under extraordinary circumstances, when private resources are not available to accomplish a necessary objective beyond the scope of in-house capabilities. Their termination is governed by the organic statutes of the individual organizations. These rules should make it even less likely that any additional Government-financed nonprofit organizations need be created. While these organizations are in existence they will be treated by the Department on arms length basis, as the rules prescribe.

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II. RULES

The following rules state general prohibitions which are then explained and illustrated by specific examples. There will undoubtedly occur cases which are not resolved by these rules. As the Bell Report said, "[Conflict of Interest] arises in several forms--not all of which are by any means yet fully understood." In order to assist in deciding what, if any, prohibitions should be applied in such instances, the two basic principles of this code--(1) preventing conflicting roles which might bias a contractor's judgment, and (2) preventing unfair competitive advantage--should be paramount. The following rules and examples are not all inclusive but merely attempt to achieve these two goals in a variety of situations. The ultimate test should always be: Is the contractor placed in a position where his judgment may be biased, or where he has an unfair competitive advantage? If so, corrective action must be taken in accordance with the rules below.

As used in these rules, "contractor" means the person under contract to the Department of Defense to perform the work described in each rule, and its affiliates; "system" means system, subsystem, project or item. The term "systems engineering" includes a combination of substantially all the following activities: determination of specifications, identification and solution of interfaces between parts of the system, development of test requirements or plans and evaluation of test data, and supervision of design work. The term "technical direction" includes a combination of substantially all the following activities: preparation of work statements for contractors, determination of parameters, direction of contractors' operations, and resolution of technical controversies.

1. If a contractor agrees to provide systems engineering and technical direction (SE/TD) for a system, without at the same time assuming over-all contractual responsibility for: (a) development, or (b) integration, assembly and checkout (IAC), or (c) production of the system, then that contractor shall not later be allowed to supply the system or any major components thereof, or to be a subcontractor or consultant to a supplier of the system or any major components thereof.

Explanation: The SE/TD contractor occupies a highly influential and responsible position as an agent of the Department of

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Defense both in determining basic concepts of a system and in supervising their execution by other contractors. To assure the objectivity of its services and hence a more soundly planned system, the SE/TD contractor must not be in a position to make decisions which could favor its own products. Furthermore, it would be inconsistent with the managerial responsibility of an SE/TD contractor for it to be concurrently one of the component suppliers.

Example A: Company A agrees to provide SE/TD for the Navy on the power plant for a group of submarines (i.e., turbine, drive shafts, props, etc.). Company A shall not be allowed to supply any power plant components. Company A can, however, supply components of the submarine unrelated to the power plant (e.g., fire control, navigation, etc.). In this example, the system is the power plant, not the submarine, and the ban on the supply of components is coterminous with the system only.

Example B: Company A is the SE/TD contractor for system X. After some progress, but prior to completion, the system is canceled. Later, system Y is developed to achieve the same purposes as system X, but in a fundamentally different fashion. Company B is the SE/TD contractor for system Y. Company A may bid to produce system Y or its components.

2. If a contractor agrees to prepare and furnish complete specifications covering nondevelopmental items to be used in competitive procurement, that contractor shall not be allowed to furnish such items, either as a prime or subcontractor, for a reasonable period of time including, at least, the initial procurement. This rule shall not apply to:

a. Contractors who furnish at Government request specifications or data with respect to the product they furnished, even though the specifications or data may have been paid for separately or in the price of the product.

b. Situations where one or more contractors acting as industry representatives assist Department of Defense agencies in preparing, refining or coordinating specifications, regardless of source, which assistance is supervised and controlled by Government representatives.

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c. Contracts for developmental or prototype items.

Explanation: If a single contractor is engaged by the Government to draft complete specifications for nondevelopmental equipment, he should be eliminated for a reasonable time from competition for production based on the specifications. This should be done in order to avoid a situation where he could draft specifications which would favor his own products or capabilities. In this way the Government can be assured of getting unbiased advice as to the content of its specifications and can avoid allegations of favoritism in the award of production contracts.

In development work it is normal to select firms which have done the most advanced work in the field. It is to be expected that these firms will design and develop around their own prior knowledge. Development contractors can frequently start production earlier and more knowledgeably than firms which did not participate in the development, and this affects the time and quality of production, both of which are important to the Department of Defense. In many instances the Government may have financed such development. Thus, the development contractor may have an unavoidable competitive advantage which is not considered unfair and no prohibition should be imposed.

In instances of cooperation between industry and Department of Defense agencies to prepare, refine or coordinate specifications, there is continuous participation and supervision by Government representatives and, usually, more than one contractor concerned. In these circumstances Government supervision prevents the establishment of specifications oriented to favor a given contractor's products or capabilities.

Example A: Company A prepares updated Government specifications for a standard refrigerator to be procured competitively. Company A shall not be allowed for a reasonable period of time to compete for supply of the refrigerator.

Example B: Company A designs or develops a new electronic equipment and, as a result of the design or development, prepares specifications. Company A may supply the electronics equipment.

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Example C: XYZ Tool Company and/or KLM Machinery Company representing the American Tool Institute work under the supervision and control of Government representatives to refine specifications or to clarify the requirements of a specific procurement. These companies may supply the item.

3. If a single contractor, other than a company which has participated in the development or design of a system, agrees to assist the Department of Defense or a contractor of the Department of Defense in the preparation of a statement of work, or agrees to provide material leading directly, predictably, and without delay to a statement of work, to be used in the competitive procurement of a system or services, that contractor shall not be allowed to supply the services, or the system or major components thereof, unless he is the sole source. The content of a statement of work shall not be considered predictable if more than one contractor is involved in the preparation of material leading to it.

Explanation: The various services related to a statement of work to be used in a competitive procurement should normally be performed by the Department of Defense. However, when it is necessary to seek the assistance of contractors, they may often be in a position to favor their own products or capabilities. To overcome this possibility of bias, such contractors are to be prohibited from supplying a system or services procured on the basis of work statements growing out of their services.

No prohibitions are imposed on development contractors for the reasons given in the explanation to rule 2.

Example A: Company A receives a contract to define the detailed performance characteristics the Department of Defense will require for the purchase of rocket fuels. A has not developed the particular fuels. At the time the contract is awarded, it is clear to both parties that the performance characteristics arrived at will be used by the Department of Defense to choose competitively a contractor to develop or produce the fuels. Company A shall not be permitted to bid on this procurement.

Example B: Company A receives a contract to prepare a detailed plan for the procurement of services aimed at the advanced scientific and engineering training of Department of Defense personnel.

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It suggests a curriculum which the Department of Defense endorses and incorporates in requests for proposals to various institutions to establish and conduct such training. Company A shall not be permitted to bid on this procurement.

Example C: Company A prepares a feasibility study of a new weapons system without proposing in detail the characteristics of a possible final device. It may bid to produce the system or components thereof.

4. If a contractor agrees to conduct studies or provide advice concerning a system, which work requires access to proprietary data of other companies, the contractor must agree with such companies to protect such data from unauthorized use or disclosure so long as it remains proprietary. In addition, the contractor shall not be permitted to utilize the data in supplying the system, or components thereof, procured, either by formal advertising or negotiation, as a direct result of that study or advice, or in performing for the Department of Defense additional studies in the same field which are obtained competitively.

Explanation: Proprietary data is information considered so valuable by its owners that it is held secret by them and their licensees. Where a contractor must obtain such data from others for purposes of the study, and can obtain it by the leverage of the Department of Defense contract, he will gain an advantage over other companies unless there are restrictions upon his use of the data. Such restrictions are necessary both to protect the data, and to encourage companies to furnish it to contractors for the necessary performance of the Department of Defense contract. The rule is not intended to protect proprietary data furnished voluntarily by companies without limitations as to use, or data which falls into the public domain.

Example A: Company A is selected to study the use of lasers in military communications. The Department of Defense will request that firms doing research in the field make proprietary data available to A. In order to receive the contract, A must agree with such firms

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to protect any proprietary data it obtains, so long as it remains proprietary, and shall not be permitted to utilize the data in supplying any lasers to the Department of Defense. Furthermore, while A could not receive a competitively awarded contract to perform additional studies of lasers using such data, it may receive a sole source contract for such studies.

Review and Waiver

The contracting officer is responsible for applying these rules to contracts under his cognizance. If the prospective contractor disagrees with his decision, the contracting officer shall report his decision, and the contentions of the contractor, through channels to an Assistant Secretary of a Military Department or the Director of a Defense Agency for decision.

Any of the prohibitions imposed by these rules may be waived by an Assistant Secretary of a Military Department or the Director of a Defense Agency if he determines that a failure to waive the prohibition will be prejudicial to the best interests of the Government.

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SECRET
(When Filled In)

TECHNICAL BACKGROUND PROCUREMENT INFORMATION

I. Contractor 25X1A

[redacted]

B. Evaluation of previous performance: Excellent

25X1A 25X1A

II. Brief description of this procurement: One-Year assignment of [redacted] to NPIC for technical services in the EDLB of P&DS. Estimated total amt. [redacted] 25X1A

A. Deliverable items: None

B. Is this procurement for other than a standard, "off the shelf" or slightly modified commercial item? Yes If "yes", is it anticipated that any more of this unit will be procured? NA If so, a complete set of directly reproducible manufacturing drawings and specifications would normally be included in this procurement. Comments:

N.A.

C. Will contract cover a period of more than 90 days? Yes
If "yes", are progress reports desired? No If so, indicate frequency, content and number of copies desired: N.A.

D. Is any Government-owned property to be provided to the contractor?

No If so, list and indicate its availability (where, when, etc.) N.A.

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E. Is any special tooling involved? No

F. Security:

1. Association with the Sponsor is [redacted] 25X1A

2. The specifications and/or drawings are N.A.

3. The item is N.A.

4. Contractor personnel known to be aware of this proposed procurement:

[redacted] 25X1A

5. Other security information None

III. Reasons for selection of this source. If other sources were considered, indicate results. If no other sources were considered, list the reasons why this firm is considered to be uniquely qualified to perform this work.

25X1A

[redacted] is well-qualified in his field, in known and respected throughout the photo-optical community.

As such, his advice and assistance in the formative stages of the Exploratory Development Laboratory of P&DS would be invaluable.

Returning to [redacted] at the end of the contract, [redacted] would be of further service in that his understanding of NPIC's technical problems could be translated into more meaningful proposals. 25X1A

25X1A

25X1A

IV. Technical contact [redacted] 3681
Name Telephone

In the event additional space is required, use the reverse side(s) of this form, with a reference to the item number to which the comment applies.

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